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Note verbale dated 19 March 2018 from the Permanent Mission of the Netherlands to the United Nations addressed to the Chair of the Committee

The Permanent Mission of the Kingdom of the Netherlands to the United Nations presents its compliments to the Chair of the Security Council Committee established pursuant to resolution 1718 (2006) and has the honour to submit the national implementation report prepared by the national authorities of the Netherlands pursuant to paragraph 17 of Council resolution 2397 (2017) (see annex).

The Kingdom of the Netherlands welcomes Implementation Assistance Notice No. 2 containing the guidelines on the preparation and submission of national implementation reports and the draft fact sheet compiling certain measures imposed by the Security Council in its resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017) and 2375 (2017) and extends its gratitude to the Committee for its efforts in that regard. The optional checklist template contained in Implementation Assistance Notice No. 2 is a useful tool, and elements from the checklist have been incorporated into the report.

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Annex to the note verbale dated 19 March 2018 from the Permanent Mission of the Netherlands to the United Nations addressed to the Chair of the Committee

Report by the Netherlands on the implementation of Security Council resolution 2397 (2017)

Pursuant to paragraph 17 of Security Council resolution 2397 (2017), the Permanent Mission of the Netherlands to the United Nations has the honour to inform the Committee of the steps taken by the Government of the Kingdom of the Netherlands to implement the measures imposed by the Council in its resolution 2397 (2017).

The implementation of United Nations sanctions is an autonomous competence of Aruba, Curaçao, Sint Maarten and the Netherlands, although the Kingdom of the Netherlands remains accountable under international law. Only the Netherlands is a member of the European Union.

Member States of the European Union implement the provisions of Security Council resolutions that fall within the scope of the competence of the European Union by means of the relevant European regulatory acts, comprising decisions, common positions and regulations of the Council of the European Union. The Netherlands and the other member States of the European Union have jointly implemented the restrictive measures against the Democratic People's Republic of Korea imposed by the Security Council in resolution 2397 (2017) by taking the following common measures:

(a) Council Implementing Decision (CFSP) 2018/16 of 8 January 2018 implementing Council Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea, which implements the designation of additional persons and entities (travel ban and asset freeze);

(b) Council Implementing Regulation (EU) 2018/12 of 8 January 2018 implementing Council Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea, which gives effect to the measures set out in Council Implementing Decision (CFSP) 2018/16;

(c) Council Decision (CFSP) 2018/293 of 26 February 2018 amending Council Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea. The Council Decision sets out the commitment of the European Union to implementing Security Council resolution 2397 (2017) by imposing the following measures:

(i) The European Union had already introduced a full prohibition on the export of all refined petroleum products in Council Decision (CFSP) 2017/1860 of 16 October 2017, including a provision that the export of refined petroleum products could be authorized by the competent authority of a member State for humanitarian purposes under the conditions mentioned in paragraph 14 of Security Council resolution 2375 (2017). In Council Decision (CFSP) 2018/293 it is now further specified that the amount of refined petroleum products authorized for export cannot exceed 500,000 barrels per year and that it includes the export by means of pipelines, rail lines or vehicles;

(ii) Prohibition on the acquisition of fishing rights from the Democratic People's Republic of Korea;

(iii) Prohibition on exporting crude oil to the Democratic People's Republic of Korea. The Committee may grant exemptions on a case-by-case basis under certain conditions;

(iv) Prohibition on the procurement of food and agricultural products, machinery, electrical equipment, earth and stone (including magnesite and magnesia), wood and vessels from the Democratic People's Republic of Korea;

(v) Prohibition on exporting industrial machinery, transportation vehicles, iron, steel and other metals to the Democratic People's Republic of Korea, unless it has been determined by a member State that the provision of spare parts is needed to maintain the safe operation of passenger aircraft in the Democratic People's Republic of Korea;

(vi) Obligation to cooperate as promptly as possible with another member State which has information that leads to suspect that the Democratic People's Republic of Korea is attempting to export illicit cargo and the member State requests additional maritime and shipping information;

(vii) Obligation for member States to seize and dispose of any item identified in inspections of which the export is prohibited by resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2371 (2017), 2375 (2017) or 2397 (2017);

(viii) Obligation for member States to seize, inspect and impound any vessel in their ports or any vessel subject to their jurisdiction in their territorial waters which is suspected to have been involved in activities prohibited by the above-mentioned resolutions. The Committee may grant exemptions to this provision on a case-by-case basis and upon request;

(ix) Prohibition on the provision of classification services to vessels identified as being involved in activities or transporting items prohibited by the various resolutions related to the Democratic People's Republic of Korea. The Committee may grant exemptions on a case-by-case basis under certain conditions;

(x) Prohibition on the provision of insurance or reinsurance of vessels identified as being involved in activities or transporting items prohibited by the various resolutions related to the Democratic People's Republic of Korea. The Committee may grant exemptions on a case-by-case basis under certain conditions;

(xi) Prohibition on registering a vessel that has been deregistered by another State pursuant to paragraph 24 of resolution 2321 (2016), paragraph 8 of resolution 2375 (2017) or paragraph 12 of resolution 2397 (2017);

(xii) Obligation to immediately, and no later than 21 December 2019, repatriate, in accordance with international law, all nationals from the Democratic People's Republic of Korea who are earning income in the jurisdiction of that member State and all Democratic People's Republic of Korea government safety oversight attachés who are abroad;

(xiii) Prohibition on satisfying any claim in connection with any contract or transaction the performance of which has been affected by the measures;

(d) Council Regulation (EU) 2018/285 of 26 February 2018 amending Council Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea, which gives effect to the measures set out in Council Decision (CFSP) 2018/293.

Implementation of resolution 2397 (2017) in the Netherlands

The above-mentioned Council Regulation is binding in its entirety and directly applicable to all member States of the European Union. As soon as the European legislation was adopted, the Minister for Foreign Affairs of the Netherlands entered into negotiations with the relevant ministries and other governing bodies in order to lay down the necessary national provisions in secondary legislation within the framework of the Sanctions Act 1977 (Sanctiewet 1977). The amending legislation has been drafted and agreed upon and will be published soon.

Financial control

Provisions from international sanctions regimes, such as those of the United Nations and the European Union, have been transposed into nationally applicable standards through the Sanctions Act 1977 (Sanctiewet 1977). The Act states that the Minister of Finance may designate one or more legal entities to monitor compliance with sanctions legislation (the Sanctions Act 1977 and secondary legislation) in relation to financial transactions. In the Legal Entities Designation Order pursuant to the Sanctions Act 1977, the Minister of Finance designated the central bank of the Netherlands (De Nederlandsche Bank NV) and the Financial Markets Authority (Autoriteit Financiële Markten) as supervisors of compliance with sanctions legislation by specific categories of financial institutions. The central bank is responsible for the supervision of credit institutions, trust offices, payment institutions, pension funds and insurers. The Financial Markets Authority supervises the following financial institutions: managers of undertakings for collective investment in transferable securities, managers of alternative investment funds, as referred to in sections 2:65 and 2:66a of the Financial Supervision Act (Wet op het financieel toezicht), and investment firms.

The Supervision Order pursuant to the Sanctions Act 1977 (Regeling Toezicht Sanctiewet 1977), prepared jointly by the Financial Markets Authority and the central bank, provides financial institutions with a framework for taking measures. There are two types of financial sanctions: an order to freeze assets and a ban or restrictions on providing financial services. These sanctions are intended to prevent undesirable transactions (embargoes) and to combat terrorism. Institutions take measures to ensure that they can identify clients and associates that are legal or natural persons or entities referred to in sanctions legislation. Institutions subsequently ensure that they do not provide financial resources or services to those clients and associates and that they are able to freeze their financial assets.

In short, financial institutions are required to have proper internal controls so that they can meet their obligations under sanctions legislation. They also have an obligation to notify supervisory bodies of any frozen funds or frozen financial assistance. Failure to meet those obligations can result in a penalty under national administrative law. Infringement of those standards is also deemed to be an offence under the Economic Offences Act (Wet op de Economische Delicten). There are currently no reports of frozen funds or frozen financial assistance under European Union Council regulations that derive from the sanctions regime against the Democratic People's Republic of Korea.

As part of an annual risk analysis, financial institutions are required to report their activities in countries named under sanctions regimes. The central bank assesses the inherent sanctions risks of financial institutions. The information provided is analysed and outliers are assessed. The central bank conducts thematic reviews of compliance with sanctions legislation and takes action in response to occasional incidents (e.g. if a financial institution or other entity reports an alleged breach of sanctions legislation).

Since the submission of the report on the implementation of resolutions 2371 (2017) and 2375 (2017), no financial institutions have reported any business with regard to the Democratic People's Republic of Korea. Any new obligation stemming from sanctions legislation are communicated to the relevant financial institutions to further increase awareness in the financial sector.

In 2016 and 2017, the Financial Markets Authority investigated an entity under its supervision that may have violated sanctions measures. No violations could be established and the case was closed. Since then, no cases have been reported.

In addition to conducting investigations, the Financial Markets Authority operated the sanctions alert system of the central bank in 2017. The central bank uses the system to publicize new sanctions measures of relevance to financial businesses. In this regard, businesses in the financial sector have been alerted to the upcoming prohibition on the provision of insurance or re-insurance services to vessels which are reasonably believed to be involved in activities prohibited by earlier resolutions, including the transport of banned items.

Import and export control

The export control unit is located at the Ministry of Foreign Affairs of the Netherlands and falls under the responsibility of the Minister for Foreign Trade and Development Cooperation. All enforcement activities, however, are the responsibility of the customs service, which is part of the Ministry of Finance. In addition to general customs tasks related to sanctions, a special customs unit, the precursors, strategic goods and sanctions legislation team, is responsible for company audits, inspections and investigations. The team also contacts the public prosecutor whenever sufficient evidence has been collected to bring a case to trial. There is a distinction between daily customs tasks at the border (port of Rotterdam and Schiphol airport) and the tasks carried out by the team. Border officials are responsible for checking export declarations and conducting physical checks. Such checks, which are based mainly on risk management (warning signals, intelligence information, etc.), are overseen by the customs national tactical centre. As all imports from and exports to the Democratic People's Republic of Korea have a risk profile, they are automatically checked. The precursors, strategic goods and sanctions legislation team of the customs service selects cases to be subject to enforcement activity. The team specializes in enforcement, including supervisory inspections (audits) and investigations (including criminal investigations), in relation to drug precursors, strategic goods (dual-use and military) and sanctions and anti-torture legislation. The Ministry of Foreign Affairs works closely with the export control unit and the customs service. Planned inspections are jointly implemented and there is close communication to ensure prompt notification and action whenever irregular behaviour by an organization is observed. Cases are selected on the basis of the severity of a violation and the evidence available. The customs service keeps the export control unit updated if a case is brought to the attention of the public prosecutor.

The report on the implementation of resolutions 2371 (2017) and 2375 (2017) mentioned the interception of a consignment of equipment destined for the Democratic People's Republic of Korea. However, the customs service was unable to establish that a sanctions measure had been breached. Since then, no consignments from or destined for the Democratic People's Republic of Korea have been intercepted.

Visa control

With regard to the restrictions on admissions (visa bans), the Netherlands implements the relevant provisions in accordance with existing national frameworks. Council Decision (CFSP) 2016/849 of 27 May 2016 and Council Regulation (EC) 539/2001 of 15 March 2001 provide the basis for refusing admission and denying visa requests.

The individuals listed in Council Decision (CFSP) 2016/849 have been registered in the Schengen Information System, which ensures that any request by those individuals for a Schengen visa will be denied. The embassy of the Netherlands in Beijing processes almost all visa applications for nationals of the Democratic People's Republic of Korea and is aware of the importance of implementing the sanctions against the individuals listed in Decision (CFSP) 2016/849. Since mid-November 2017 one visa has been granted to a national of the Democratic People's Republic of Korea.

Regarding the obligation to repatriate all nationals of the Democratic People's Republic of Korea earning income abroad and all government safety oversight attachés monitoring workers from the Democratic People's Republic of Korea, the implementation by the Netherlands will be regulated through the adoption of an amendment to the Foreign Nationals Employment Act Implementation Decree (Besluit uitvoering Wet arbeid vreemdelingen), which will revoke all exemptions from work permits for nationals of the Democratic People's Republic of Korea. The amendment is expected to pass, as are two previously announced amendments, which stipulate that no work authorizations may be granted to nationals of the Democratic People's Republic of Korea. The amendments are expected to enter into force in 2018. Until then, the relevant national authority has been instructed to reject any requests for work authorizations for nationals of the Democratic People's Republic of Korea.